

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

OP.No. 4907 OF 2001(H)

PETITIONER:

SUN METALS AND ALLOYS PRIVATE LIMITED,
KANJIKODE WEST, PALAKKAD,
REPRESENTED BY ITS PRESIDENT -
P.C. SURENDRANATH.

BY ADV. SRI.V.GIRI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL
SECRETARY TO GOVERNMENT, INDUSTRIES J
DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. SECRETARY TO GOVERNMENT, POWER DEPARTMENT,
GOVT. OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.
3. KERALA STATE ELECTRICITY BOARD, REPRESENTED
BY ITS SECRETARY, VYDYUTHIBHAVANAM, PATTOM
PALACE P.O., THIRUVANANTHAPURAM.

ADV. SRI.T.G.RAJENDRAN SC FOR K.S.E.B.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 26/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P. NO. 4907/2001

ORDER ON CMP 8109/2001 IN O.P. 4907/2001

// DISMISSED //

26.10.2006.

SD/-, P.R. RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

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| EXT.P1 | TRUE COPY OF TE GOVERNMENT ORDER NO. G.O.(P) NO. 37/83/W&P DATED 3.8.1983. |
| EXT.P2 | TRUE COPY OF THE BOARD ORDOER NO. PLG. COM. 37/83 DATED 28.10.1983. |
| EXT.P3 | TRUE COPY OF THE GOVERNMENT ORDER DATED 5.10.1986 - G.O.(MS) P. 20/86/PD. |
| EXT.P4 | TRUE COPY OF THE BOARD ORDER B.O. NO. TCI/5855/86 DATED 10.11.1986. |
| EXT.P5 | TRUE COPY OF THE PROVISIONAL REGISTRATION CERTIFICATE ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, PALAKKAD DATED 19.9.1980. |
| EXT.P6 | TRUE COPY OF THE CERTIFICATE EVIDENCING ENERGISATION ISSUED BY THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION, PALAKKAD ON 18.9.1982. |
| EXT.P7 | TRUE COPY OF THE INVOICE ISSUED FOR THE MONTH OF AUGUST, 1982 DATED 20.9.1982. |
| EXT.P8 | TRUE COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION DATED 28.4.1988. |
| EXT.P9 | TRUE COPY OF THE CERTIFICATE REGARDING MODERNISATION OF THE UNIT DATED 17.2.1988. |
| EXT.P10 | TRUE COPY OF THE APPLICATION MADE TO POWER DEPARTMENT ON 12.5.1988. |
| EXT.P11 | TRUE COPY OF THE ORDER OF THE GOVERNMENT DATED 20.11.1989. |
| EXT.P12 | TRUE COPY OF THE JUDGMENT IN O.P. NO. 520 OF 1990 DATED 18.4.1995. |

O.P. NO. 4907/2001

- EXT.P13 TRUE COPY OF THE JUDGMENT DATED 18.9.1988 IN
W.A. NO. 1063 OF 1995.
- EXT.P14 TRUE COPY OF THE REPRESENTATION DATED 3.11.1998
SUBMITTED BEFORE THE GOVT. AS DIRECTED IN
EXHIBIT P.13.
- EXT.P15 TRUE COPY OF THE JUDGMENT IN O.P. NO. 4105 OF
1999 DATED 17.2.1999.
- EXT.P16 TRUE COPY OF THE ORDER OF THE GOVERNMENT
DATED 29.9.1999
- EXT.P17 TRUE COPY OF THE STATEMENT SHOWING THE
DETAILS OF AMOUNT PAID AND OTHER RELEVANT
DETAILS.
- EXT.P18 TRUE COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE HON'BLE MINISTER FOR INDUSTRIES ON
11.10.1999.
- EXT.P19 TRUE COPY OF THE NOTICE DATED 2.11.1999
PROPOSING HEARING ON EXHIBIT P18.
- EXT.P20 TRUE COPY OF BILL/INVOICE NO. 20311 DATED
9.10.2001 ISSUED BY THE BOARD TO THE PETITIONER.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

KNC/-

P.S. TO JUDGE.

P.R. RAMAN, J.

O.P. NO. 4907/2001

DATED THIS, THE 26TH DAY OF OCTOBER, 2006

J U D G M E N T

Petitioner, is a Company incorporated under the Companies Act and is a small scale industrial unit functioning at Kanjikode West in Palakkad District and engaged in manufacture of Ferro Silicon and Calcium Carbide.

2. By Ext.P1 Order, Government declared its policy of granting package of incentives to large, medium and small scale industrial units and accordingly, the Government decided to charge only the pre-revised power tariff for the small scale industries and for the new industries set up or to be started after 1.9.1982 or to increased power consumption of industries after 1.9.1982 on account of substantial expansion or modernization of the existing industries for a period of five years after the industry is set up or started. Accordingly, Government passed a detailed order in the matter. This was adopted by the Board for implementation as evidenced by Ext.P2 order dated 28.10.1983. Thereafter, the policy as announced by Government Order Ext.P1 was reiterated by Ext.P3 order dated 6.10.1986 which reads that “in the industrial policy statement announced by the Government of Kerala in January, 1983, Government have declared inter

alia, that Government will continue with the policy of granting a package of incentives to the large, medium and small scale industries. It was decided to charge only the pre-revised power tariff for the small scale industries, new industrial units and expansion/diversification/modernization of existing units which are started after 1.9.1982. Accordingly, a detailed order was passed, relevant portion of which to the extent it applies to the facts of the case are hereunder:

“(a) New Industrial Units will be exempted from the increase in power tariff effective from 1.9.1982 and will be charged only the pre-1.9.1982 tariff for a period of 5 years from the date of their starting commercial production provided the unit started commercial production after 1.9.1982, but before 2.9.1987.

(b) In the case of a unit which undertakes substantial expansion/diversification/modernization also, the consequential tariff mentioned in (a) above will be applicable on the same terms for the increased power consumption, provided, the unit started commercial production as per expansion/modernization/diversification after 1.9.1982 but before 2.9.1987. In the case of units where modernization involves scrapping of old plants and equipment, the power consumption of the new plant and equipment will be charged only at the pre-revised rates.

© Small Scale Industries as on 1.9.1982 will

continue to be charged the pre 1.9.1982 tariff for a period of 5 years from 1.9.1982 and new units or expansion/diversification/modernization of existing units will also be eligible for the concessions referred to in (a) and (b)".

3. In the case of the petitioner, a provisional registration of the unit was granted in 1980 as evidenced by Ext. P5 and subsequent to the provisional registration, the unit was set up by the petitioner which was energized on 20.8.1982. Certificate evidencing such energisation issued by the Executive Engineer dated 18.9.1983 is produced as Ext.P6. Petitioner started consumption of electricity from 20.8.1982 and he was accordingly billed for the same. Due to power-cut and short-fall in the hydro power available during the relevant time and certain other factors beyond his control, petitioner was not able to generate sufficient profits by operating the 1000 KVA capacity furnace for manufacture of Ferro Silicon and Calcium Carbide and it was understood that 1000 KVA capacity was no longer economically viable when compared to more modernized larger plants. Petitioner had also accumulated a loss of Rs. 22 lakhs and in 1986 as an alternative for closing the unit and taking advantage of the policy of the Government and because of the intervention of several agencies, he thought it fit to modernize the unit and make it viable. The modernization

involved complete scrapping of the 1000 KVA furnace and installation of a new 2500 KVA modern furnace at a cost of Rs. 40 lakhs. It is averred that the major factor which persuaded the petitioner to undertake the modernization was the promise held out by the Government to all persons like him that they will be entitled to consume electricity at the pre 1982 concessional tariff for five years from the date of commencement of commercial production after modernization. A new set of plant of machinery of 2.5 MVA capacity was thus installed in 1987. Petitioner was also permitted to consume electricity at pre-1982 tariff from September 1982 till the unit was scrapped in 1987. So however, the concessional tariff was not extended to his modernized plant which started commercial production on 31.8.1987. According to the petitioner, the modernization of the plant was done after scrapping the existing one as certified by the competent authority as evidenced by the certificate issued on 17.2.1988, which is produced as Ext.P9 herein. According to him, on the strength of Ext.P3 Government Order, he is entitled to concessional tariff at pre-1982 tariff for his modernized plant for a period of five years from 31.8.1987. But he was being charged at the current rate in spite of his eligibility to such concessional rate. Though petitioner made an application to the Power

Department in Ext.P10 dated 12.5.1998 nothing was done in the matter of extending such concession to his modernized plant. But by Ext.P11 dated 20.11.1989 the request was turned down which was the subject matter of O.P. 520/1990. This Court dismissed the said original petition by Ext.P12 judgment dated 18.4.1995, the correctness of which was challenged in W.A. No.1063/1995. As per Ext.P13 judgment rendered by a Division Bench of this court, the said writ appeal was ultimately allowed, the judgment of the learned Single Judge was set aside and the order passed by the Government produced as Ext.P7 therein was set aside. Further, the case was remanded to the State Government with a direction to decide the case afresh after adverting to Para C of the Government Order dated 6.10.1986. Thereafter, since the Government did not pass any order on Ext.P14 representation made by the petitioner, he again approached this Court by filing O.P. 4105/1999 in which Ext.P15 judgment was rendered directing the Government to pass appropriate orders on the representation made by the petitioner within three months from that day. It was thereafter that the Government took up for consideration the claim of the petitioner and rejected the same by Ext.P16 dated 29.9.1999. According to the petitioner, the reasoning given in Ext.P16 is clearly perverse and contrary to Ext.P3

directions issued by the Government in the matter of extending the pre-1982 tariff to persons like him. It is contended that the denial of pre-1982 tariff to him for five years commencing from 1.9.1987 is clearly illegal and liable to be set aside. Petitioner has produced Ext.P17 statement to show that the details of the amount collected from him in excess of what is legitimately due from him at the pre-1982 concessional tariff, which alone, he is liable to pay. He also claims refund of the amounts shown in Ext.P17 along with 24% interest or adjustment of the said amount in future payment.

4. In the counter affidavit filed for and on behalf of the Kerala State Electricity Board, it is contended that petitioner was originally sanctioned tariff concession at pre-1982 rate for a period of five years from 9.9.1982 which expired on 8.9.1987, but within the above said five years period, he modernized his plant and came up with the request for further concession as provided under Clause (c) of Ext.P3 Government Order, and he is not entitled to the benefit as per Clause (c) of Ext.P3 though the issue is to be decided by the Government. Subsequently, petitioner produced Ext.P20 bill/invoice No. 20311 dated 9.10.2001 issued by the Board to him and sought stay of collection of the amount as per the said bill.

5. No separate counter affidavit is filed by the Government in this

matter. I have heard the arguments of Sri. V. Giri, learned counsel appearing on behalf of the petitioner as also the standing counsel appearing for the Electricity Board.

6. In order to understand the benefit conferred on a small scale industrial unit on the strength of Clause © of Ext.P3, it is necessary to understand as to what are the benefits extended to other industrial units and even in the absence of Clause © (assuming to be so) what will be the benefit that will be available to the petitioner. In this regard, as per Clause (b) of Ext.P3 a unit which undertakes substantial expansion/ diversification / modernization are also entitled to the concessional tariff which are only at pre-1982 tariff, provided the commercial production as per the expansion / modernization / diversification started after 1.9.1982, for a period of five years. In case of units where modernization involves scrapping of old plants and equipments, the power consumption of the new plant and equipments will be charged only at the pre-revised rates. Thus, the petitioner, even in the absence of clause (c) would otherwise will be entitled to the pre-revised tariff since the modernization involved scrapping of old plants. But by virtue of clause (c) of the order which specifically deals with small scale industrial units, irrespective of any modernization or

expansion as the case may be, they will continue to be charged at pre-1982 tariff for a period of five years from 1.9.1982 and in case the small scale industries also make expansion/diversification/modernization it will also be eligible for the concession referred to in Clause (a) and (b) of Ext.P3. Therefore, clause (c) contains two parts - the first part extends the benefit of pre-1.9.1982 tariff to all small scale industries irrespective of whether there is any diversification/expansion/modernization. In addition thereto, if it involves such expansion or modernization after scrapping the existing plant, they will also be eligible for the benefit under clause (b) of Ext.P3. In other words, the intention is not to confine to either of the benefits, but to grant an additional benefit as far as the small scale industries are concerned. It cannot, in such circumstances, be said that what is available to an industry where there is modernization, expansion or diversification after scrapping the existing unit to avail the pre-1.9.1982 tariff will be denied to a small scale industry which satisfies the said condition. The interpretation placed on Ext.P3 by Ext.P16 order is therefore clearly wrong and contrary to Ext.P3. Hence Ext.P16 is quashed. It is declared that the petitioner is entitled to the pre-1.9.1982 tariff for a period of five years from the commencement of commercial production on 31.8.1987. Since he had

already paid the charges at the enhanced rate, the excess amount paid over the pre-1.9.1982 tariff for the above period is to be adjusted towards future dues. However, in view of the facts and circumstances, petitioner will not be entitled for any interest on the excess paid.

The original petition is thus allowed. No costs.

P.R. RAMAN,
(JUDGE)

knc/-

O.P. 4907/2001

:10:

P.R. RAMAN, J.
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O.P. NO. 4907/2001

J U D G M E N T

DATED: 26.10.2006.